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11

12 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

13 **-oOo-**

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 vs.
17 AARON VIRCHIS,
18 Defendant.

19 2:14-cr-00096-JAD-PAL

20 **GOVERNMENT'S RESPONSE IN**
OPPOSITION TO DEFENDANT'S
MOTION FOR EARLY
RELEASE FROM PROBATION
(Doc. #80)

21 The United States of America, by and through STEVE MYHRE, Acting United
22 States Attorney, and Cristina D. Silva, Assistant United States Attorney, and files this
23 response to Defendant's Motion for Early Termination of Probation (Doc. #80).¹

24

25 **RELEVANT PROCEDURAL FACTS**

26 On April 2, 2014 the Defendant pleaded guilty pursuant to a plea agreement to a
27 criminal information (Doc. #45), charging him with a violation of 18 U.S.C. § 1955,
28 *Operating an Illegal Gambling Business. See Doc. #51 (Minutes of the Proceedings).*

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1 On October 16, 2014, the defendant was sentenced to a three-year term of probation
 2 with special conditions. *See Doc. #62 (Judgment).* The defendant has approximately 6
 3 months left on his term of probationary sentence.

4 On February 8, 2017, the defendant filed a *pro se* motion to terminate his
 5 probationary sentence early. Doc. #80. The United States files this timely response.
 6

ARGUMENT

7 Defendant moves this Court for early termination of his probation. In support of
 8 his motion, Defendant argues that he has complied with the terms of his conditions of
 9 supervision, and sets forth reasons for early termination utilizing the factors set forth
 10 in Title 18, United States Code, Section 3553, and the Sentencing Guidelines. The
 11 undersigned Assistant United States Attorney contacted the defendant's supervising
 12 officer, Henry Stegman, who advised he does not have an objection to early termination
 13 at this time.²
 14

15 As this court knows, there is not a great deal of reported law analyzing motions
 16 for the early termination of probation pursuant to Title 18, United States Code, Section
 17 3564(c), however the statute requires the court to consider factors set forth in §
 18 3553(a). Those factors "include the nature and circumstances of the offense, the need
 19 for deterrence, the need to protect the public, the need to provide defendant with
 20 training or medical care, and the relevant provisions of the Sentencing Guidelines."
 21 *United States v. Hilton*, 2014 WL 3728176 (N.D.Cal. 2014) at *1 (stating early

22 ² Defendant represents that the United States stated it would not object to early
 23 termination. Doc. #80 at pg. 2, ¶3. The undersigned attorney recalls stating that if the
 24 defendant remained compliant, it would consider a motion for early termination when six
 months of his probationary term remained, however has no recollection of stating the
 Government would not object to a motion for early termination.

1 termination of probation is governed by 18 U.S.C. § 3564(c), and requires the court to
2 consider factors set forth in § 3553(a), to the extent they are applicable); *United States*
3 *v. Khan*, 2012 WL 2906590 (N.D.Cal. Jul. 13, 2012) (considering factors enumerated in
4 § 3553(a) for early termination of probation). The 18 U.S.C. § 3553(a) factors most
5 relevant to the early termination of probation are:

6 (1) the nature and circumstances of the offense and the history and
7 characteristics of the defendant; (2) deterrence; (3) protection of the
8 public; (4) the need to provide the defendant with educational,
9 vocational training, medical care or other rehabilitation; (5) the
10 sentence and sentencing range established for the category of
11 defendant; (6) any pertinent policy statement by the Sentencing
Commission; (7) the need to avoid unwarranted sentence disparities
among defendants with similar records who have been found guilty
of similar conduct; and (8) the need to provide restitution to any
victims of the offense. *Id.*

12 After considering those § 3553(a) factors, the court may “terminate a term of probation
13 previously ordered and discharge the defendant at any time after the expiration of one
14 year of probation in the case of a felony, if it is satisfied that such action is warranted
15 by the conduct of the defendant released and the interest of justice.” 18 U.S.C. §
16 3564(c).

17 The Government does not dispute that the defendant has been mostly compliant
18 with probation requirements. The one exception was the hearing regarding Probation’s
19 request to modify the defendant’s condition of supervision. The defendant initially
20 refused to agree to the modification, however that issue was resolved at a hearing. See
21 Doc. #69. The Government asserts that the Court should not terminate a defendant’s
22 probation early simply because he has mostly compliant because that is what is
23 expected of probationers. See generally *United States v. Smith*, 219 F. App’x 666, 667

1 (9th Cir.2007) (unpublished decision) (early termination of supervised release reserved
2 for rare cases of “exceptionally good behavior”); *United States v. McKay*, 352 F.Supp.2d
3 359, 361 (E.D.N.Y.2005) (finding that the defendant’s “pre-incarceration life,” including
4 organizational endeavors, is commendable, but is expected of a person on supervised
5 release and does not constitute the “exceptional behavior” contemplated by §
6 3583(e)(1)); *Karacsonyi v. United States*, 152 F.3d 918, 1998 WL 401273 (2nd Cir. June
7 10, 1998) (unpublished); *United States v. Rasco*, 2000 WL 45438 (S.D.N.Y. Jan.19,
8 2000); *United States v. Yung*, 1998 WL 422795 (D.Kan. Jun.12, 1998); *United States v.*
9 *Hardesty*, 2002 WL 731705 (D.Kan. April 2, 2002); *United States v. Herrera*, 1998 WL
10 684471 (S.D.N.Y. Sept.30, 1998). However, the defendant’s pro se motion goes beyond a
11 generic assertion that he has been complied with the terms of his probation. Instead,
12 he addressed many of the 3553 factors that this Court should consider in decided
13 whether to terminate his probation early. For example, his motion discusses having
14 satisfied his financial obligations, his low risk of recidivism, and the fact that he is
15 gainfully employed. See Doc. #80 at ¶12, 14, and 19. Further, the defendant
16 acknowledges culpability and requests no sympathy as a result of his criminal actions.
17 Doc. #80 at ¶16. Defendant’s motion demonstrates that he understands the nature and
18 consequences of his offense, that he has worked to rehabilitate herself, and that the
19 conviction had an appropriate deterrence effect. Accordingly, the Government asserts
20 that the decision to early terminate the defendant’s probationary sentence rests with
21 the sound discretion of the Court.

23 ...

24 ...

CONCLUSION

Based on the forgoing, the United States submits that the decision regarding whether to early terminate the defendant's probation rests with the sound discretion of the Court.

Respectfully submitted this 21st day of March, 2017.

Respectfully Submitted,

STEVE MYHRE
Acting United States Attorney

//s//

CRISTINA D. SILVA
Assistant United States Attorney

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2 **CERTIFICATE OF SERVICE**
3

4 I, Cristina D. Silva, certify that the following individual was served with a copy
5
6 of the foregoing on this date by the below identified method of service:
7

8 **Electronic Case Filing** (on March 21, 2017)
9

10 Aaron Virchis
11 4575 Dean Martin Drive
12 Unit 2700
13 Las Vegas, NV 89103

14 David Chesnoff, Esq.
15 Richard Schonfeld, Esq.
16 Chesnoff & Schonfeld
17 520 S Fourth Street
18 Las Vegas, NV 89101

19 DATED: March 21, 2017
20

21 */s/ Cristina D. Silva*
22 Cristina D. Silva
23 Assistant United States Attorney
24